

REMARKS/ARGUMENTS

The claims are 1, 3-4, and 11. Claim 1 has been amended to improve its form and to incorporate subject matter previously appearing in claims 2 and 6. Accordingly, claims 2 and 6 have been canceled, and claim 3 has been amended to conform with amended claim 1. Claims 5, 7 and 10 have also been canceled without prejudice. Claim 9 has been canceled in favor of new claim 11 which specifies the shelf in the display device so as to correspond with claim 1 of Applicant's recently issued U.S. Patent No. 6,877,618. Support for the claims may be found, inter alia, in the disclosure at pages 9-13 and FIG. 3. An updated Declaration and Power of Attorney is submitted herewith as requested by the Examiner. A substitute specification is also submitted herewith in order to provide numbered paragraphs and to correct a clerical error on line 9 of page 2. No new matter has been added. Reconsideration is expressly requested and entry and reconsideration of the substitute specification are respectfully requested.

The Examiner requested that an updated Declaration for Patent Application and Power of Attorney be provided which contains updated information regarding co-pending patent application as 29/174,678, 29/176,492 and 29/177,331. In response, Applicant is providing herewith the updated Declaration which indicates the status of 29/174,678 as abandoned and 29/176,492 and 29/177,331 as patented. The '492 application issued as Design Patent No. D 489,556, and the '331 application issued as Design Patent No. D 486,324.

The disclosure was objected to as lacking numbered paragraphs and as containing a clerical error on line 9 of page 2. In response, Applicant submits herewith a clean and marked up version of a substitute specification providing numbered paragraphs corresponding to United States Patent Application Publication No. US 2004/0195195 A1 and correcting the clerical error on line 9 of page 2 as requested by the Examiner.

Claim 2 was objected to on formal grounds, the Examiner suggesting that the recitation in part (c) that "said at least one wheel comprises two wheels..." be changed to .. said base

comprises two wheels...". In response, claim 2 has been canceled and claim 1 has been amended to recite at least two wheels connected to said base and disposed in wheel wells provided in said base.

It is respectfully submitted that the foregoing amendments and substitute specification overcome the Examiner's objections to the specification and claims on the basis of these informalities.

Claims 5, 6, 7, 8 and 10 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement because of the recitation "at least three modular merchandise units". In the Examiner's view, the nominal size of a modular merchandise unit has not been set forth so therefore any shelf may be of sufficient depth to accommodate three units if the units are sufficiently small. Claim 6 was also rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. In the Examiner's view, the shape and function of the horizontal and curved shelf portions were insufficiently detailed in the claims and drawings. In response,

Applicant has canceled claims 5-8 and 10, without prejudice and has amended claim 1 to incorporate those portions of claim 6 which were not objected to by the Examiner, thereby obviating the Examiner's objections on these bases.

Claims 1 and 5 were rejected under 35 U.S.C 102(b) as being anticipated by *U.S. Patent No. 3,006,707 to Rossi*. Claims 2-4 and 6-7 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Rossi* in view of (1) *Young et al. U.S. Patent No. 4,598,828* and *Adams et al. U.S. Patent No. 6,427,857* (claim 2), (2) what the Examiner calls official notice (claim 3), (3) *U.S. Patent No. 6,405,880 to Webb* (claim 4), (4) *U.S. Patent No. 5,706,953 to Polvere* (claim 7) or *U.S. Patent No. 4,562,927 to Fredrickson* and *U.S. Patent No. 3,377,771 to Schmidt* (claim 9). Essentially, the Examiner's position was that *Rossi* discloses the display device recited in the rejected claims, except for features which were considered to be shown in the secondary references or to be well known in the art.

The Examiner however has not made any prior art rejection with regard to claim 6. Accordingly, without conceding the propriety of the Examiner's rejections, and in order to expedite

prosecution of this case, Applicant has amended claim 1, inter alia, to incorporate certain subject matter that previously appeared in claim 6. Accordingly, it is believed that claim 1, as amended, and dependent claims 3-4 should now be in condition for allowance. In any event, Applicant respectfully traverses the Examiner's rejection for the following reasons.

As set forth in claim 1, as amended, Applicant's invention provides a display device for at least one modular merchandise having a substantially flat base. The display device includes a base and a housing supported by the base. The base includes parallel first and second base walls and parallel third and fourth base walls connected to the first and second base walls. The housing includes parallel first and second side walls and a third side wall connected to the first and second side walls. A cover is disposed on an upper portion of the first, second and third side walls.

At least two wheels are connected to the base and disposed in wheel wells provided in the base, and at least one shelf is supported in the housing for receiving the base of the merchandise unit. The third side wall includes a plurality of support openings for supporting the shelves arranged in at least

two parallel rows of support openings in the third side wall with each shelf being supported in the at least two support openings.

Each of the first and second base walls has a guide opening and a guide member for alignment of the display device with first and second additional additional display devices. The third base wall includes wheel guide openings adjacent to the wheel wells for alignment of the display of the display device with a third additional display device.

Applicant's display device may be transported to a point of sale location filled with modular merchandise units with a substantially flat base, such as packet boxes, and readily arranged ready for use with similar display units in different configurations.

Past display devices for batteries and other articles of merchandise packaged in packet boxes were loaded on disposable display devices made of cardboard. These cardboard display devices had the capacity for receiving only one horizontal row of modular merchandise units because if the device were constructed to hold more than one unit deep of merchandise, the weight of the product would make it impractical to ship the device with the

merchandise to the retail establishment. Moreover, these known display devices lacked durability and typically were discarded at the retail establishment once all the products of the display device had been dispensed. As a result, most of the time a partially-filled display devices was presented to customers as products removed from the display device were not replaced, leaving empty spaces in the display device. In addition, such display devices were difficult to move once filled with product, and as a result, once placed at a particular location, the display device was not moved until emptied or discarded.

With Applicant's display device, these problems are solved in that with Applicant's design, the display can be simply and economically produced and filled and shipped fully loaded with modular merchandise units to a retail establishment, may be reused by a retail establishment and replenished with products, and may be readily and easily moved while filled with products to different locations at the retail establishment.

Applicant's display has revolutionized the industry. In place of the unsightly cardboard displays previously being used that had to be repeatedly replaced, retail establishments that have purchased Applicant's display now have an attractive,

durable display that is reusable, easy to move, and can come filled with products ready for sale.

Rossi fails to disclose or suggest a display device for at least one modular merchandise unit and having a substantially flat base. Rather, Rossi is concerned with a dispensing and display cabinet for containers of fruit juice, which are designed to roll down inclined shelves as products are removed from point of access. See col. 1, lines 7-10 and 62-64, and col. 2, lines 16-18. Moreover, Rossi fail to disclose or suggest a housing including first and second sidewalls and a third sidewall connected thereto that includes a plurality of support openings arranged in at least two parallel rows of support openings in the third sidewall with each shelf being supported in at least two support openings as recited in claim 1, as amended.

In addition, there is no disclosure or suggestion in Rossi of a display device in which first and second base walls aligned with first and second side walls each have a guide opening and a guide member. The guide opening and guide members permit alignment of the display device with first and second additional display devices. With such guide openings, one may easily and readily align the display device with one or more additional

display devices such as is shown in FIG. 4A and 4B. For example, four display devices may be arranged so that two display devices with flat shelves may be placed back to back with two or four display devices with gravity feed shelves placed on either side of the display devices with flat shelves. Another arrangement is shown in FIG. 4B of Applicant's disclosure using four display devices that has two display devices with either shelves back to back, a third display device on one side of the front display device and a fourth display device on an opposite side of the back display device. This "pinwheel" arrangement is a useful way to position four display devices of the present invention and is made possible by the use of the guide opening and guide members which are nowhere disclosed or suggested by *Rossi*. Moreover, the guide opening and guide member and the wheel guide openings form a lock-in base for the wheels and sides of the display device, which facilitates both shipment and stability of the arrangement of the display devices at the selected retail location.

In addition, there is no disclosure or suggestion in *Rossi* of a display device wherein the third sidewall includes an opening for use as a handle to pivot the device on the at least one wheel. *Rossi* is designed to hold refrigeration equipment. Although the cabinet of *Rossi* is provided with wheels, it is

respectfully submitted that one skilled in the art would have no reason to form a handle in one of the walls as Rossi's device with the equipment is too heavy to tilt and move on one set of wheels.

Moreover, as set forth in new claim 11, Applicant's invention provides a display with a gravity-feed shelf for at least one modular merchandise unit having a substantially flat base such as is used to package batteries. Such modular units when loaded on display devices which use a straight gravity-fed course have several disadvantages. If, as is typical, a moderate incline is used, there is often insufficient pressure acting on the last unit loaded in the display so that one or more of the units fails to advance to the correct presentation position at the dispensing location of the display. However, if the angle were made steeper, the front modular unit would either be presented to the consumer tilted at an incorrect presentation angle or else the weight on the front modular unit would not let it sit flat and would cause the unit to lift and roll out of the front of the display. In either case, the front unit would not correctly face the customer.

In addition, particularly for batteries, a product often comes from the manufacturer in packet boxes and are put in display devices that have hooks to hang the products. These display devices require personnel to remove the product from the packet boxes, and hang the product on the hooks. Moreover, once in the display device when a purchaser removes the product, the display gives an undesirable appearance of being unstocked which requires personnel to either restock the display, or remove the remaining products to the front of the display.

Applicant's display as recited in claim 11 with the shelves recited therein solves these problems by providing a gravity-feed shelf with at least one support and including at least two spaced-apart members for the base of the merchandise unit to ride on along a travel path in the channel. This support has an inclined rearward portion elevated at a first angle between 10° and 25° , a substantially horizontal forward portion, and an inclined intermediate portion connecting the rearward and forward portions elevated at a second angle greater than the first angle. The travel path is defined along the at least two spaced-apart members in the channel from the inclined rearward portion to the forward portion and is unobstructed between the rearward and forward portions so that the merchandise unit when placed on the

rearward portion or the intermediate portion of the support will descend by gravity to the forward portion of the support for access to the unit in a selected presentation position.

This arrangement has several advantages. For one, it allows the batteries to be displayed in the modular merchandise unit or packet boxes, in which they are typically shipped, without requiring store personnel to remove the batteries from the packet boxes and place the products on hooks in display devices as typically used to display batteries. In addition, it enables the display device to have a full appearance with the modular merchandise unit displayed in the correct forward position without being stuck along the path of travel due to the combination of the gravity-feed angle at the inclined rearward portion and the steeper acceleration angle at the intermediate portion of the support.

Rossi is directed to a dispensing and display cabinet for displaying containers of fruit juices with an inclined shelf that would suffer the disadvantages of such inclined shelves of having insufficient pressure acting on the last unit loaded in the display if the incline were moderate and would cause the modular

units to get stuck in the display devices if the angle were made steeper.

Accordingly, it is respectfully submitted that *Rossi* fails to anticipate claim 1 as amended, new claim 11, and dependent claims 3-4 which depend on claim 1. In addition, it is respectfully submitted that none of the secondary references overcome the defects and deficiencies of *Rossi* to render claims 1, 3-4 and 11 obvious for the following reasons.

Like *Rossi*, *Young et al.* is directed to a storage and dispensing rack for dispensing bottles or cans or generally cylindrical shaped containers. It is respectfully submitted that a dispenser concerned with rolling bottles or cans which readily roll on a rack involves different considerations and can provide no solution to the problems facing the designer of a dispenser with a heavy product in a corrugated box with a lot of friction.

Moreover, contrary to the Examiner's position, *Young et al.* fails to disclose or suggest first and second base walls having a guide opening and a guide member for alignment of the display device with first and second display devices as recited in amended claim 1. Rather, each flange 24 of *Young et al.* is

designed to be received between the corresponding aperture 22 and side member 12 in order to form the storage and displacing rack itself. See col. 3, lines 16-31. They cannot serve to align additional display devices as contended by the Examiner. In addition, there is no disclosure or suggestion in *Young et al.* of providing wheels in *Young et al.*'s display rack, let alone wheel guide openings adjacent to wheel wells for alignment of display racks with a third additional display device. Rather if such wheels were to be placed into *Young et al.*, it would interfere with *Young et al.*'s purpose to be able to rotate the rack depending on whether the surface was inclined or flat. See col. 2, lines 15-18.

Moreover, there is no disclosure or suggestion in *Young et al.* of a third side wall that includes an opening for use as a handle to pivot the device on at least two wheels as *Young et al.* lacks both the third side wall and wheels which would interfere with *Young et al.*'s purpose.

There is also no disclosure or suggestion in *Young et al.* of Applicant's display device as recited in claim 11, with the specific form of gravity-feed shelf wherein the support has a inclined rearward portion elevated at a first angle between 10°

and 25°, a substantially horizontal forward portion, and an inclined intermediate portion connected to the rearward and forward portions elevated at a second angle greater than the first angle so that the merchandise unit when placed on the rearward portion or the intermediate portion of the support will descend by gravity to the forward portion of the support for access to the unit in a selected presentation position. Rather, *Young et al.* simply teaches a straight incline, and the rack would suffer the disadvantages of such inclined shelves as discussed previously.

Adams et al. is directed to an expandable display apparatus and method that includes a main display unit 12, expansion panels 14 and 16, an end cap display units 18 and 20, which are supported on caster sets 60 and 61, and a bottom recess 64, which is sized and shaped to clear a set of casters on display panel 14. However, there is no disclosure or suggestion of Applicant's display device as recited in claim 1, as amended, in which a cover is disposed on an upper portion of first, second and third side walls. In fact, such a cover would interfere with *Adams et al.* purpose of having an expandable display apparatus.

In addition, there is no disclosure or suggestion in *Adams et al.* of the guide opening and guide members for alignment of the display device with first and second additional display devices. There is also no disclosure or suggestion in *Adams et al.* of an opening in a third wall as recited in claim 3, for use as a handle to pivot the device on the wheels. Moreover, *Adams et al.* is entirely unconcerned with a gravity-feed shelf, and nowhere discloses or suggests the display device having the specific gravity-feed shelf as recited in new claim 11.

With respect to claim 3, the Examiner takes official notice that it is supposedly well known in the art to use a cutout of a vertical surface as a handle. However, as stated previously, one skilled in the art would have no reason to provide *Rossi et al.* with a cutout in its rear wall, as the refrigeration equipment in *Rossi et al.*'s display would make the display too heavy to tilt and move on one set of wheels.

Webb U.S. Patent No. 6,405,880 (referred to at page 6 of the Office Action but not listed on the Form 892 by the Examiner) and *Webb U.S. Patent No. 6,783,012* (which is listed on the Form 892) disclose a rack merchandise system including a moveable pallet base having openings to receive lifting forks, and a central

support structure perpendicularly attached to the movable pallet base and having two vertically extending guides. A header 58 may be attached to the central support structure 14, which can accommodate advertising graphic inserted into channel 76 defined by extrusion 78 slid into the channel 80 of header 58.

There is no disclosure or suggestion of Applicant's display device as recited in claim 1, as amended, that has at least two wheels connected to the base. In fact, the use of wheels is contrary to *Webb's* purpose of moving his display by conventional pallet jack or forklift. Moreover, there is no disclosure or suggestion of Applicant's display device in which the first and second base walls have guide openings and a guide member for aligning of the display device with first and second additional devices or wheels disposed in wheel wells with wheel guide openings adjacent to the wheel wells for alignment of a third additional display device.

There is also no disclosure or suggestion of Applicant's display device as recited in claim 3, in which the third side wall includes an opening for use as a handle to pivot the device on the wheels. In addition, there is no disclosure or suggestion of a display device having the specific gravity-feed shelf

recited in new claim 11, in which the support has an inclined rearward portion elevated at a first angle between 10° and 25°, a substantially horizontal forward portion, and an inclined intermediate portion connected to the rearward and forward portions elevated at a second angle greater than the first angle, so that a merchandise unit when placed on the rearward portion or the intermediate portion of the support will descend by gravity to the forward portion of the support for access to the unit in a selected presentation position. Rather, *Webb* simply shows a straight incline which would suffer the disadvantages discussed above with respect to such shelves.

Polvere discloses a carton formed with insert panels and shelves in which flat shelves fit into insert panels connected to the first and second side walls. There is no disclosure or suggestion of Applicant's display device as recited in claim 1, as amended, in which the third side wall includes a plurality of support openings arranged in at least two parallel rows of support openings in the side wall with each shelf being supported in at least two support openings. Moreover, there is no disclosure or suggestion of Applicant's display device in which each of the first and second base walls has a guide opening and a

guide member for alignment of the display device with first and second additional display device, and the base includes two wheels disposed in the wheel wells provided in the base and third wheel guide openings adjacent to the wheel wells for alignment of the display device with a third additional display device.

In addition, there is no disclosure or suggestion of Applicant's display device as recited in as claim 3 in which the third side wall includes an opening for use as a handle to pivot the device on the at least one wheel. There is also no disclosure or suggestion of Applicant's display device as recited in new claim 11 having the specific gravity-feed shelf structure. Rather, *Polvere* is concerned with flat panel shelves.

Fredrickson discloses a display rack with a pair of end sides which support a plurality of shelves 13. There is no disclosure or suggestion of Applicant's display device in which the third side wall includes a plurality of support openings arranged in at least two parallel rows of support openings in the third side wall with each shelf being supported in at least two support openings as recited in claim 1, as amended. Moreover, there is no disclosure or suggestion of Applicant's display

device in which each of the first and second base walls has a guide opening and a guide member for alignment of the display device with first and second additional display devices and the base includes wheel guide openings adjacent to wheel wells for alignment of the display device with a third additional display device.

There is also no disclosure or suggestion of Applicant's display device as recited in claim 3, in which the third side wall includes an opening for use as a handle to pivot the device on the at least one wheel. There is also no disclosure or suggestion of Applicant's invention as recited in claim 11 in which the display device includes at least one shelf having a support with a rearward portion elevated at a first angle, a substantially horizontal forward portion, and an intermediate portion connected to the rearward and forward portions elevated at a second angle greater than the first angle so that the merchandise unit when placed on the rearward portion of the support will descend by gravity to the forward portion of the support for access to the unit in a selected presentation position. Rather, *Fredrickson* simply shows a straight incline

shelf which suffers the disadvantages encountered with such shelves in the past.

Schmidt is directed to an apparatus for loading cans into cartons, which is designed to have the cans roll down a tiered frame. There is no disclosure or suggestion of Applicant's display device as recited in claim 1, as amended, which accommodates at least one modular merchandise unit having a substantially flat base. There is no disclosure or suggestion of a housing having first and second side walls and a third side wall connected to first and second side walls in which the third side wall includes a plurality of support openings arranged in at least two parallel rows of support openings in the third side wall with each shelf being supported in at least two support openings. There is likewise no disclosure or suggestion of a guide opening and guide member for alignment of the display device with first and second additional display devices, or of a wheel guide openings adjacent to the wheel wells for alignment of the display device with at least one additional display device.

Similarly, there is no disclosure or suggestion of a third side wall in *Schmidt* that includes an opening for use as a handle

to pivot the device on the at least one wheel. Moreover, there is no disclosure or suggestion of Applicant's display device as recited in new claim 11 having the specific gravity-feed shelf design in which the support has inclined rearward portion elevated at a first angle between 10° and 25°, a substantially horizontal forward portion, and an inclined intermediate portion connected to the rearward and forward portions elevated second angle greater than the first angle, so that the merchandise unit when placed on the rearward portion of the intermediate portion of the support will descend by gravity to the forward portion of the support for access to the unit in a selected presentation position. Rather, *Schmidt et al.* simply discloses an apparatus that is designed to allow the cans 77 to roll freely (see col. 4, lines 43-44), and is entirely unconcerned with a gravity feed shelf for a modular merchandise unit having a substantially flat base. Moreover, contrary to the Examiner's position, there is no disclosure or suggestion of a support with a substantially horizontal forward portion. Rather *Schmidt et al.*'s apparatus is designed to load the rolling cans into a carton on a conveyor belt 205, not to provide a display device in which the shelf presents a modular merchandise unit in a selected presentation position as recited in claim 11.

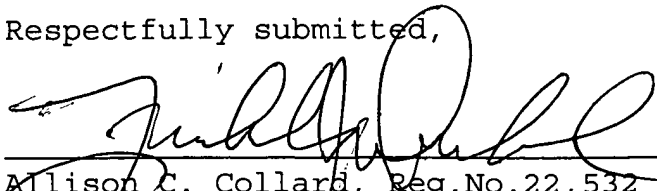
Accordingly, it is respectfully submitted that claims 1 and 11 are patentable over the cited references together with claims 3-4, which depend on claim 1.

In summary, claims 1 and 3 have been amended, claims 2 and 5-10 have been canceled, and new claim 11 has been added. An updated Declaration and Substitute Specification have been enclosed. In view of the foregoing, it is respectfully requested that the claims be allowed and that this case be passed to issue.

In addition, Applicant respectfully requests that the Examiner make *Webb U.S. Patent No. 6,405,880* formally of record and attaches a PTO 1449-Form for this purpose.

Also, Applicant respectfully requests that the Examiner make of record the references listed in Applicant's December 5, 2003 Information Disclosure Statement a copy of which is enclosed.

Respectfully submitted,



COLLARD & ROE, P.C.

1077 Northern Boulevard

Roslyn, New York 11576

(516) 365-9802

FJD:djp

Allison C. Collard, Reg.No.22,532

Frederick J. Dorchak, Reg.No.29,298

Attorneys for Applicant

Enclosure:

Petition for one month extension of time

Declaration/Power of Attorney

Substitute Specification (Clean and Marked-Up Version)

Information Disclosure Statement filed December 5, 2003

PTO 1449-FORM

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on March 10, 2006.



Kelly Espitia